

ENTERED

July 09, 2020

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DOUGLAS GRANT MARSHALL,

Petitioner,

VS.

LORIE DAVIS,

Respondent.

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CIVIL ACTION NO. 4:18-CV-4135

MEMORANDUM AND ORDER

On March 12, 2020, this Court granted the respondent's motion for summary judgment and dismissed the petition for a writ of habeas corpus filed by Texas state inmate Douglas Grant Marshall. Final Judgment (Doc. # 16). On June 29, 2020, Marshall filed a motion for a new trial and for an evidentiary hearing. The Court construes this as a motion for relief from the judgment under Fed. R. Civ. P. 60(b).

Rule 60(b) allows a losing party to seek relief from judgment under a limited set of circumstances including fraud, mistake, and newly discovered evidence. Fed. R. Civ. Pro. 60(b); *see Gonzalez v. Crosby*, 545 U.S. 524, 529 (2005). Marshall's motion alleges that he has not received copies of the state court records filed by the respondent and does not know if those records are complete. This Court's decision to dismiss Marshall's petition, however, was not dependent on those records but rested solely on the conclusion that Marshall failed to state a legally cognizable claim for relief. *See* Doc. # 15 at 3. Neither the state court record nor any further evidentiary development would have any bearing on this conclusion. Accordingly, it is ORDERED that Marshall's motion for a

new trial and motion for an evidentiary hearing (Doc. # 19) are DENIED. Because Marshall does not make a substantial showing of the denial of a constitutional right, no certificate of appealability shall issue.

It is so ORDERED.

SIGNED on this 9th day of July, 2020.

A handwritten signature in black ink, appearing to read "Kenneth M. Hoyt", written over a horizontal line.

Kenneth M. Hoyt
United States District Judge